

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AERO CONSTRUCTION COMPANY,  
INC.,  
a Washington corporation

Plaintiff and Counterclaim Defendant,

vs.

BURLINGTON NORTHERN SANTA FE  
RAILWAY CORP.,

Defendant, Counterclaimant and  
Third-party Plaintiff,

vs.

DMJM HARRIS, INC., SCARSELLA  
BROS., INC., CAMWEST  
DEVELOPMENT, INC.,

Third Party Defendants.

Case No. CV 05-1383RSL

ORDER STRIKING LATE-FILED  
DECLARATION

This matter comes before the Court *sua sponte*. On October 12, 2006 defendant, counterclaimant and third-party plaintiff Burlington Northern Santa Fe Railway Corporation ("BNSF") filed a supplemental declaration in support of its opposition to third-party defendant DMJM Harris, Inc.'s motion for summary judgment. (Dkt. #100). This supplemental declaration was submitted unaccompanied by a motion for leave despite the fact that it was filed ten days after BNSF's original response (Dkt. #92) and almost a week after DMJM Harris, Inc. Submitted its reply in support of summary judgment. (Dkt. #95). In the absence of any explanation as to

1 why the Federal Rules of Civil Procedure would allow the Court to consider such a late-filed  
2 declaration, the Court hereby orders that defendant/third-party plaintiff's "Supplemental  
3 Declaration of Donald Omsberg in Support of Defendant BNSF's Response in Opposition To  
4 Third Party Defendant DMJM Harris, Inc.'s Motion for Summary Judgment" be STRICKEN.

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6 DATED this 17<sup>th</sup> day of October, 2006

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9 Robert S. Lasnik  
10 United States District Judge  
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